



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,195	03/06/2001	Suk H. Cho	09143-017001	3370

26191 7590 06/28/2006

FISH & RICHARDSON P.C.
PO BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

OH, SIMON J

ART UNIT	PAPER NUMBER
----------	--------------

1618

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/800,195	CHO ET AL.	
	Examiner	Art Unit	
	Simon J. Oh	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24,33 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24,33 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Papers Received

Receipt is acknowledged of the applicant's amendment, response, petition for extension of time, request for continued examination, and declaration under 37 C.F.R § 1.132, all received on 07 April 2006. Receipt is acknowledged of the applicant's information disclosure statement, received on 09 May 2006.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 1-19 and 21-30 under 35 U.S.C. 103(a) over Gaynor et al. is hereby withdrawn.

The rejection of Claims 1-34 under 35 U.S.C. 103(a) over Perkes is hereby withdrawn.

Claims 1-24, 33 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Perkes (WIPO Publication No. WO 99/07400) in view of Shrikhande *et al.* (U.S. Patent No. 6,544,581)

The Perkes *et al.* publication discloses dietary supplements comprising an enzyme that is effective for inhibiting in vivo platelet activity and LDL cholesterol oxidation in a mammal at a dosage of about 30 mg/kg or less. The supplements may contain grape seed extracts, grape skin

Art Unit: 1618

extracts, bilberry extracts, ginkgo biloba extracts or quercetin. The supplements may also contain fungal proteases, acid stable proteases and bromelain (See Abstract).

The Perkes reference does not explicitly teach the use of Muscat grapes.

The Shrikhande *et al.* patent teaches the use of Muscat grape seed extracts as a source of polyphenols (See Example 5). Polyphenols are disclosed as being beneficial to cardiovascular health (See Column 1, Lines 21-32). Such extracts may be incorporated into dietary supplements (See Claim 15).

It would be obvious to one of ordinary skill in the art to combine the prior art references in order to make obvious the instantly claimed invention. One of ordinary skill in the art would be motivated to use the examples of Shrikhande *et al.* in order to determine good sources of polyphenols in order to optimize the cardiovascular health effects of the compositions disclosed in the Perkes reference. As the prior art has disclosed the usefulness of Muscat grape seed extracts, the limitations of the instantly claimed invention are met. Furthermore, although precise ratios are not disclosed by the prior art, it is the view of the examiner that such limitations can be met through routine experimentation. Without a clear showing of criticality of such a feature, the burden is shifted unto the applicant to demonstrate such criticality. Thus, the instantly claimed invention is *prima facie* obvious.

Response to Arguments

Applicant's arguments filed 07 April 2006 have been fully considered but they are moot in view of the new ground of rejection.

Correspondence

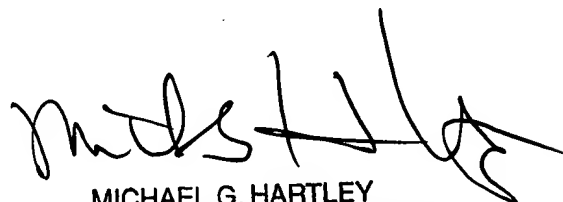
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh
Examiner
Art Unit 1618

sj0


MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER